

MISSOURI DEPARTMENT OF INSURANCE

Review Of The National Council On Compensation Insurance Workers' Compensation Insurance Advisory Loss Cost Filing Effective January 1, 2006

MISSOURI DEPARTMENT OF INSURANCE
Actuarial Review
Missouri Workers' Compensation Advisory Loss Costs
Effective 1/1/2006

Purpose and Scope

This is an actuarial review of workers' compensation advisory loss costs filed on behalf of the insurance industry by the National Council on Compensation Insurance, Inc. (NCCI). These loss costs will become effective in Missouri on January 1, 2006. The purpose of this study is to provide employers, insurers, self-insurers and other interested parties with an analysis of the NCCI's advisory loss costs and to set forth the Missouri Department of Insurance's (MDI's) own recommended advisory loss costs.

My name is David B. Cox, FCAS, MAAA, Property and Casualty Actuary for the MDI. I prepared this study with no other actuaries participating. The user is requested to use the report in its entirety. Any questions about the report should be directed to David B. Cox, FCAS, MAAA.

Background

How Loss Costs are Used. Loss costs are used by insurers and self-insurers to establish final workers' compensation insurance premium rates. "Loss costs" represent the portion of final premiums that will pay the injured workers' expected medical benefits, indemnity (i.e., wage-loss) benefits and associated loss adjustment expenses.

When setting final premium rates, insurers consider these loss costs, as well as their own past experience, overhead expenses, investment income and a competitive profit provision. In Missouri loss costs are "advisory" in nature, meaning there is no requirement that they be adopted by insurers. However, insurers typically use advisory loss costs in calculating their final premium rates, usually by applying a "loss cost multiplier" to those advisory loss costs to achieve their final "base" premium rates. Licensed insurers then file these final premium rates with the MDI, but these filed rates can be further modified by an insurer based on an individual policyholder's past experience and the policyholder's individual risk characteristics. Loss costs are determined for each of the 600+ business job classification codes recognized in Missouri, and apply prospectively to policies issued during 2006.

Senate Bill 1. Major changes to Missouri's workers compensation laws were enacted during 2005, which are summarized by the Division of Workers' Compensation at their website www.dolir.missouri.gov/wc/. Although the law changes are significant, NCCI estimates that Senate Bill 1 will result in only a -1% decrease in expected loss and loss adjustment expenses. NCCI concludes that tightening compensability in combination with providing for performance reviews of Administrative Law Judges may reduce, over

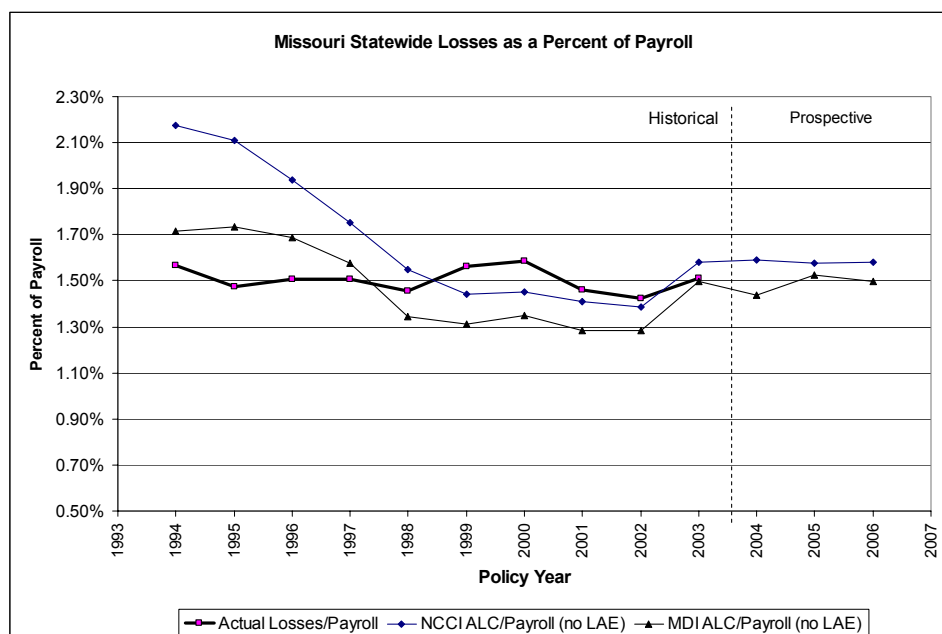
time, the number of compensable claims by -1%. NCCI expects that increased litigation costs will offset some of the reductions in benefits.

NCCI's assumption of a -1% impact is made without objective evidence. Indeed, such information is not presently available. In such cases NCCI's judgment of the likely impact of SB 1 may be less useful than that of workers' compensation specialists more familiar to Missouri's unique environment.

Insurers are not obligated to adopt NCCI's estimated impact of SB 1 nor may the Department of Insurance disapprove NCCI's advisory loss costs. Many insurers rely on NCCI's recommendation when setting their rates, particularly when assessing the impact of changes to the law.

The "Glitch". In the process of enacting SB 1, a transcription error occurred which altered the wording of the law. This problem could possibly result in a temporary annulment of the workers' compensation "exclusive remedy" provision. The exclusive remedy provision requires workplace injuries to be resolved under the workers' compensation laws rather than tort law. Although the language was corrected to restore the exclusive remedy, there is a possible gap from August 28 to December 14, 2005. The Department has reviewed the legislative history and concludes that the General Assembly did not intend to carve out an exception that eliminates the whole of the workers' compensation law. The glitch has no impact on the 2006 prospective loss costs because it was corrected in 2005.

Historical Accuracy of Advisory Loss Costs. The following analysis focuses on the aggregate statewide expected loss costs for 2006. The chart below compares historical statewide losses as a percent of payroll to past and prospective NCCI statewide advisory loss costs and to past and prospective MDI advisory loss costs.



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Prior to 1998, NCCI advisory loss costs exceeded the actual loss percentage, sometimes by a very large margin. MDI also overestimated losses from 1994 to 1996 but to a lesser degree. From 1998 to 2000 both NCCI and MDI underestimated the loss percentage. From 2001 to 2002 NCCI's advisory loss costs were reasonably accurate while MDI's were somewhat too low. Both NCCI's and MDI's 1/1/2003 advisory loss costs increased approximately 13%. For the 2006 forecast the NCCI advisory loss costs are somewhat higher than MDI estimates.

Market Segments. The Missouri workers' compensation market has several distinct sectors with varying rate level considerations. Two large sectors that are not considered by NCCI when establishing loss costs are self-insured employers and employers insured by insurance companies under "large deductible" insurance policies (\$100,000 or greater). Several smaller segments are also excluded from NCCI's analysis: self-insured excess policies, national defense projects, F-classes (longshoremen), and underground coal mining. In addition, insurers that have become insolvent do not report their experience to NCCI.

One sector whose data *is* included in NCCI's development of advisory loss costs is the assigned risk pool, which is a sector that has been growing in size. The pool is the mechanism employers use when they are required by law to purchase workers' compensation insurance but cannot obtain it from private insurance companies. The pool's rates are developed by a contract insurer and are approved by the MDI. Assigned risk rates are significantly higher on average than those of the so-called "voluntary market," in large part to reflect the relatively higher losses in the pool.

The voluntary market is a primary user of advisory loss costs. The voluntary market plus the assigned risk pool is called the "statewide" market by NCCI and in this report. NCCI prepares advisory loss costs on a statewide basis although NCCI's report is labeled "Voluntary Loss Costs". Because the pool's experience is not representative of the voluntary market, its data should not be included in the development of advisory loss costs necessary to cover expected losses in the voluntary market. To do so would unnecessarily inflate the loss costs in the voluntary market. Therefore, the MDI analysis includes an adjustment to convert statewide loss costs to levels appropriate for the voluntary market.

Findings and Recommendations

NCCI's filing proposes no overall change (0.0%) in statewide advisory loss costs. I have reviewed the 2006 NCCI workers' compensation loss cost filing and make the following findings and recommendations:

1. The filing and supplemental information provide adequate information and data with which to render an opinion and recommendation.

2. The 2006 NCCI statewide advisory loss costs fail to fully recognize Missouri's favorable loss experience and NCCI underestimates the impact of SB 1. NCCI's 2006 statewide advisory loss costs should be reduced by -5.2% below 2005 levels. My findings are summarized below:

Summary of Major Differences in Assumptions Statewide Basis	
NCCI proposed loss cost change	0.0%
Additional impact of SB 1	-2.7%
Effect of trend provision	-2.5%
Total = MDI's recommended change	-5.2%

3. While it is difficult to assess the impact of SB 1, NCCI's estimate does not adequately reflect its impact. I assume that SB 1 will reduce 2006 loss costs by -3.6% instead of NCCI's -1%.
4. NCCI assumes that indemnity loss ratio trends will be zero through 2006. Actual past indemnity trends have been declining and I assume that indemnity loss ratios will continue to decline at a -1.5% annual rate. NCCI's medical loss ratio trend of +2.0% per year is appropriate. NCCI estimates that combined loss costs will increase at an annual rate of +1.0% while I estimate the rate of increase to be +0.3%. Because trends apply for several years, NCCI's loss costs are overstated by 2.5%.
5. The 2006 NCCI advisory loss costs are intended for statewide use, including the assigned risk pool. To convert statewide advisory loss costs to levels appropriate for the policies written in Missouri's voluntary market, the statewide advisory loss costs should be reduced by -2.8%. In other words, even if insurers adopt the NCCI's analysis of advisory loss costs for 2006, these loss costs still need to be reduced by an additional 2.8% to delete the experience of Missouri's assigned risk pool.
6. The combined reduction to 2006 NCCI loss costs necessary to obtain MDI loss costs appropriate for the voluntary market is -8.0%. See Exhibit 1.
7. The MDI recommends that NCCI revisit its analysis of SB 1 and take further steps to acquire the information necessary to adequately assess the expected future impact of SB 1 before the 1/1/07 loss costs are filed.

Reliances

In preparation of this report, I relied on information provided by NCCI, the MDI, St Paul Travelers, a large local insurer, the National Association of Insurance Commissioners, EPIC Actuaries LLC and other publicly available information. Although the above

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information was used without audit or verification on my part, I have reviewed it for reasonableness and believe it to be reliable.

Limitations

Loss Cost filings contain forecasts of expected future workers' compensation insurance payroll, losses and loss adjustment expenses. These forecasts depend upon such factors as changing judicial attitudes, law changes, litigation trends, medical inflation, claim settlement practices, economic conditions, and safety trends. Although the estimates discussed herein reflect my best professional judgment, substantial variance of actual results from the projections contained in this report is possible.

Discussion and Analysis

Data Methods and Assumptions

I have reviewed NCCI data methods and assumptions and find them to be reasonable except for their SB 1 and trending assumptions, to be discussed below. The results of my analysis are provided in Exhibit 1. Exhibit 2 is an analysis of loss trends, Exhibit 3 assesses the impact of SB 1, Exhibit 4 analyzes assigned risk experience, and Exhibit 5 is a compilation of insurer operating results in Missouri.

All experience used by NCCI is for Missouri workers' compensation insurance. The following was excluded from consideration by the NCCI for the 2006 loss costs:

- Large deductible experience has been excluded from consideration. Large deductible net premiums were approximately \$85 million in 2004 but would be much larger on a standard premium basis.
- Other miscellaneous segments excluded from consideration include self-insured excess policies, national defense projects, F-classes, and coal mining. These constituted less than 1% of premium.
- Terrorism Risk Insurance Act premiums were reported to be approximately \$16 million, or about 1.7% of net premium.
- Some insurers' data was not included. The following is the net premiums for excluded companies:

	<u>PY 2002</u>	<u>PY 2003</u>
AIG	59,895,316	98,539,266
Virginia Surety	12,741,892	8,777,995
Lumbermens	16,134,511	1,588,189
Other	<u>7,300,063</u>	
Total	96,071,782	108,905,450
Percent of Statewide	11.7%	12.0%

Three major insurers above failed to report financial call experience. Furthermore, AIG and Virginia Surety experience was excluded retroactively from historical loss

development experience because of data quality concerns. This somewhat increases the chances of error in estimating rate level needs.

Another data quality issue involves the failure of NCCI's data reporting system to identify all exposures for workers' compensation classifications when insurers reported multiple sets of payroll data. For example, if an insurer reported \$1,000,000 in payroll, but in increments of \$200,000, then \$300,000, and finally, \$500,000, NCCI's system would develop the rates based on the latest single line reported (i.e., \$500,000) rather than \$1M in payroll. The effect was to understate the payrolls for certain classes for rates filed 1/1/2002 to 1/1/2005. The 1/1/2006 NCCI advisory loss costs are also impacted by this problem but to a lesser degree. The MDI continues to investigate this data compilation problem.

Senate Bill 1

NCCI estimates that Senate Bill 1 will result in a -1% decrease in expected loss and loss adjustment expenses. According to NCCI's:

There is no data or methodology to precisely model the effect of changes in compensability standards. A survey of claims practitioners indicated that the current practice of ALJs in Missouri is to find compensability for injured workers. Tightening compensability in combination with providing for performance reviews of ALJs may reduce, over time, the number of compensable claims by 1%. Any additional impact will be reflected in subsequent data that is collected and used in future rate filings. Claims that are denied may be pursued through the tort system, which would increase litigation in the Missouri court system.

ALJ's are Administrative Law Judges. The survey referenced by NCCI is dated December 13, 2004, a month before the first legislative hearing on the bill. The survey consisted of four questions.

Typically NCCI does not revisit or reconsider a law change estimate once it is made. Any error in such estimate will only be corrected, as NCCI indicates, "in subsequent data that is collected and used in future rate filings". This means that an error would not be fully corrected until the 1/1/2009 loss cost filing.

NCCI is taking a "wait and see" attitude toward the consequences of SB 1 while the impact may indeed be reasonably quantifiable as events unfold. I recommend that NCCI revisit its analysis of SB 1 and take further steps to acquire the information necessary to adequately assess the expected future impact of SB 1 before the 1/1/07 loss costs are filed.

It is unfortunate that such little information is available to assess SB 1. Nevertheless, insurer and self-insurers have no choice but to estimate its impact in order to set rates. To assume there is almost no impact and to "wait and see" is itself an estimate and asserts a position of no change.

My own assessment of SB 1 is documented in Exhibit 3. While considerable judgment is necessary, some information is available. I estimate that the drug and alcohol provisions of SB 1 will reduce losses by -1.6%. I assume that the provisions relating to the definition of compensable accident are as important as the provisions relating to the administration of the law and assume each will reduce losses by -1%. My analysis indicates that SB 1 will reduce benefits by -3.6%, but it could certainly be more.

Trend Analysis

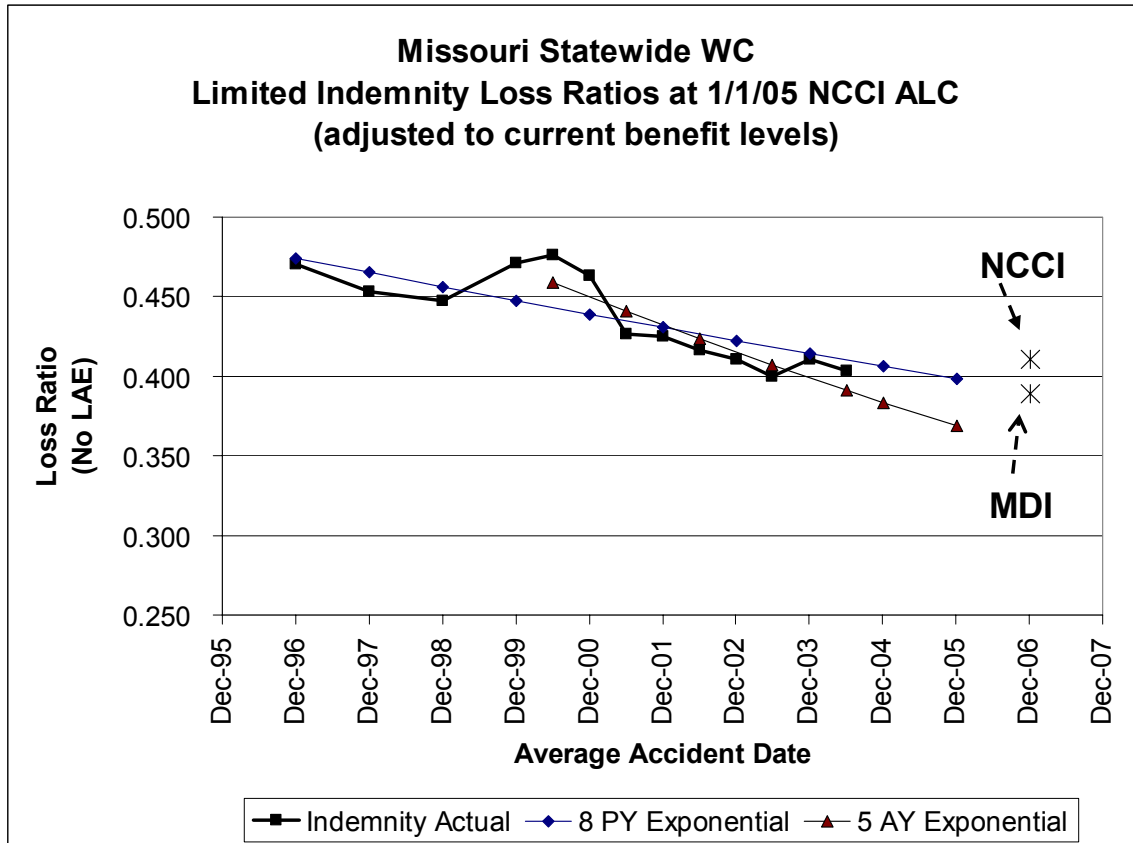
There are unavoidable delays in collecting and compiling insurance data. A primary cause for delay is the time it takes to process claims and accumulate credible volumes of loss experience upon which to make an assessment of the projected ultimate losses. NCCI's loss data consists of cumulative payments through year-end 2004 and loss reserves set on a case-by-case basis as of year-end 2004. The 2006 loss costs are for policies issued during 2006 and these policies do not fully expire until year-end 2006. There is a time lapse of approximately two and one-half years between the most recently available data (accident year 2004) and the loss projection period.

The purpose of trending procedures is to bridge the time between historical experience and the time that the loss costs will be in effect. Estimated future expected loss ratios are determined by applying trending procedures that appropriately reflect projected changes in such components as claim costs, claim frequencies, exposures, and premiums over the trending period.

In the selection of trends, actuarial judgment is needed in order to assess the future safety, wage, judicial, economic and claims environment. A summary of trend indications follows:

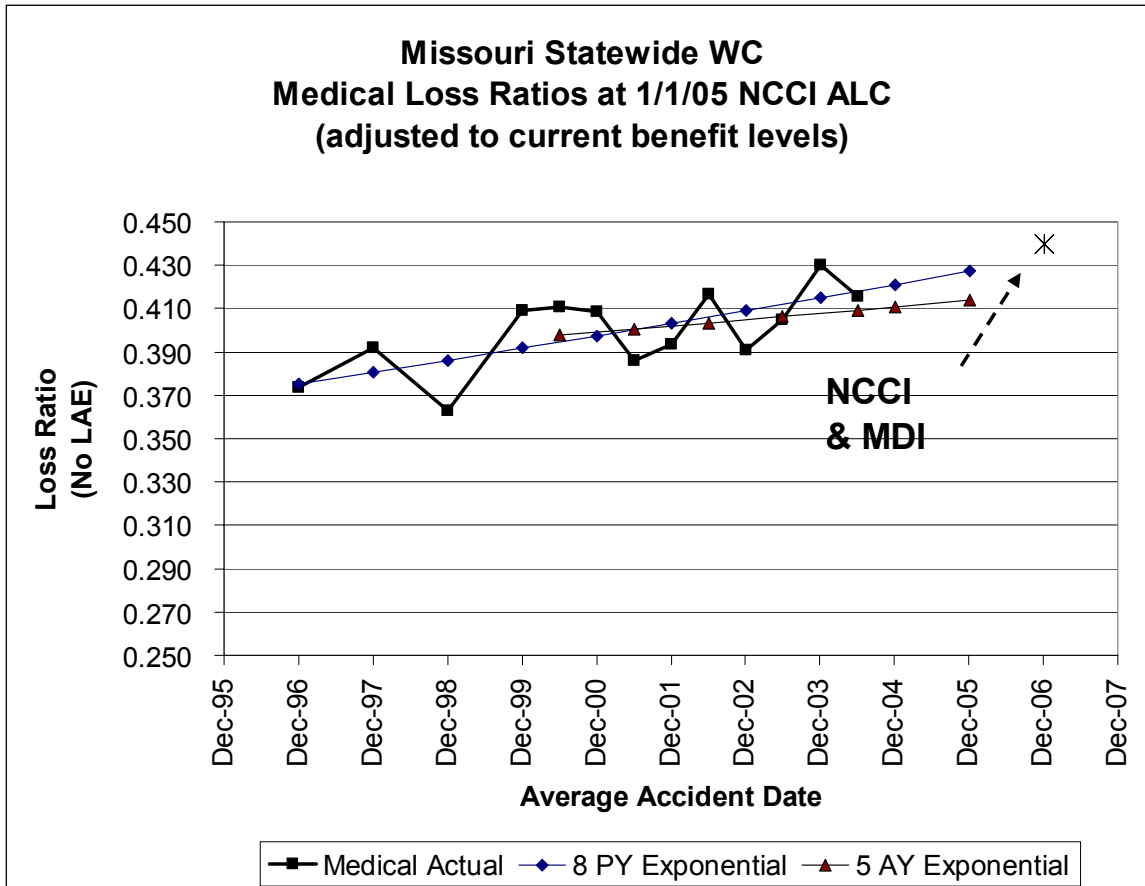
Trend Indications (Annual Rates)			
	Indemnity	Medical	Combined
MDI Recommended	-1.5%	+2.0%	+0.3%
NCCI This Year	0.0%	+2.0%	+1.0%
NCCI Last Year	0.0%	+2.0%	+1.0%
Using 8 Policy Years	-1.9%	1.5%	-0.2%
Using 5 Accident Years	-3.9%	0.7%	-1.6%

The following graph shows historical statewide indemnity losses as a ratio to NCCI advisory loss costs. Losses are adjusted to current benefit levels and advisory loss costs are adjusted to 1/1/2005 NCCI levels.



Indemnity loss ratios have been declining due to favorable trends in claim frequencies, as shown by the bold curve above. Loss ratios based on 8 policy years of experience indicate a -1.9% annual rate of change and loss ratios based on 5 accident years of experience indicate a -3.9% annual rate of change. NCCI forecasts no change in indemnity loss ratios while I assume indemnity loss ratios will continue to decline at a -1.5% annual rate. My estimate is judgmentally selected to fall in the upper range of the various indications.

The following graph shows historical statewide medical losses as a ratio to NCCI advisory loss costs. Losses are adjusted to current benefit levels and advisory loss costs are adjusted to 1/1/2005 NCCI levels.



Falling accident rates have not been sufficient to fully offset medical inflation as can be seen by the bold curve above. Loss ratios based on 8 policy years of experience indicate a +1.5% annual rate of change and loss ratios based on 5 accident years of experience indicate a +0.7% annual rate of change. Both NCCI and I forecast that medical loss ratios will increase at a 2.0% annual rate.

See Exhibit 2 for a more detailed analysis of trend selections.

Assigned Risk Adjustment

NCCI prepares advisory loss costs on a statewide basis. My analysis includes an adjustment to convert statewide loss costs to levels appropriate for the voluntary market (statewide excluding assigned risk). The details of this adjustment are provided in Exhibit 4.

St Paul Travelers administers the assigned risk plan and files rates with the MDI effective July 1 of each year. Much of the information in my analysis is based on the St Paul Travelers filing. After several years of rapid growth, the assigned risk pool premium volumes have fallen 25% through the second quarter 2005 compared to the second quarter 2004.

The assigned risk loss cost multiplier is estimated to be 1.862 based on a St Paul Travelers comparison of assigned risk standard loss costs at current NCCI levels to assigned risk standard premium at 7/1/2005 assigned risk rates. This means that 2005 NCCI advisory loss costs must be increased an average of 86.2% in order to equal the current assigned risk rates. The assigned risk expected loss ratio underlying the rates of 68.6% is taken from the Travelers Commercial Casualty Company filing in support of the 7/1/2005 rates. Assigned risk loss costs underlying current assigned risk rates are approximately 56% higher than statewide 1/1/2005 NCCI loss costs. Assigned risks are estimated to be 4.9% of the statewide NCCI loss costs in 2006. The projected assigned risk 7/1/2005-06 premium volume of \$60 million is from St Paul Travelers.

**Missouri Workers Compensation Insurance Advisory Loss Costs
Effective January 1, 2006**

Statewide and Voluntary Indicated Change

	<u>NCCI Indication</u>	<u>MDI Indication</u>	
1. Statewide Experience Period Loss Ratio at NCCI 1/1/2005 ALC	0.826	0.826	
2. Impact of Senate Bill 1	0.990	0.964	
3. Excess Provision	1.012	1.012	
4. Trend Adjustment Factor	1.035	1.010	
5. Loss Adjustment Expense Factor	1.166	1.166	
6. Statewide Projected L&LAE Ratio (1)*(2)*(3)*(4)*(5)	1.000	0.948	
7. Indicated Statewide Loss Cost Change (6)-1	0.0%	-5.2%	SW change in NCCI ALC
8. Statewide Indicated Deviation to NCCI 1/1/ <u>2006</u> ALC [(6) / (1 - .000)] -1		-5.2%	Convert '06 NCCI ALC
9. Adjustment to Remove Assigned Risk		-2.9%	Convert from SW to Voluntary
10. Voluntary Projected L&LAE Ratio (6)*[1 + (9)]		0.920	
11. Indicated Voluntary Loss Cost Change (10)-1		-8.0%	
12. Voluntary Indicated Deviation to NCCI 1/1/ <u>2006</u> ALC [(10) / (1 - .000)] -1		-8.0%	Convert '06 NCCI ALC to Vol MDI ALC

Notes:

Row (1) See Exhibit 2.
Row (3) from NCCI filing.
Row (4) See Exhibit 2.
Row (5) from NCCI filing.
Row (9) See Exhibit 3.

**Missouri Workers Compensation Insurance Advisory Loss Costs
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Trend Analysis - Missouri Statewide

1. Limited Loss Ratios At Present Voluntary Advisory Loss Costs & Benefits

	Policy Year	Indemnity Loss Ratio	Medical Loss Ratio	Total
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	1996	0.471	0.374	0.844
	1997	0.453	0.392	0.845
	1998	0.448	0.363	0.811
	1999	0.472	0.409	0.881
	2000	0.464	0.409	0.872
	2001	0.425	0.394	0.819
	2002	0.411	0.391	0.802
	2003	0.411	0.430	0.841
2. Two year Average		0.411	0.411	0.821
3. 7/1/05 Benefits Change due to AWW		1.012	1.000	1.006
4. Experience Period Loss Ratio (2)*(3)		0.415	0.411	0.826
5. Missouri Statewide Exponential Trend				
a. Policy Year 8 Points		-1.9%	1.5%	-0.2%
b. Policy Year 5 Points		-3.9%	0.6%	-1.7%
c. Accident Year 5 Points		-3.9%	0.7%	-1.6%
6. a. NCCI Selected Trend		0.0%	2.0%	1.0%
b. Trended Projected Loss Ratio		0.415	0.440	0.855
c. Effect of Trend (7b)/(4) - 1		0.0%	7.1%	3.5%
7. a. MDI Selected Trend		-1.5%	2.0%	0.3%
b. Trended Projected Loss Ratio		0.394	0.440	0.834
c. Effect of Trend (8b)/(4) - 1		-5.2%	7.1%	1.0%

Loss ratios are from NCCI. They are the average of 2-year paid loss development and 5-year paid+case loss development.

**Missouri Workers Compensation Insurance Advisory Loss Costs
Effective January 1, 2006**

Analysis of SB 1

	<u>MDI Estimate</u>
1. DEFINITION OF COMPENSIBLE INJURIES	-1.0%
DEFINITION OF ACCIDENT	
DEFINITION OF INJURY	
IDIOPATHIC INJURIES	
2. DRUG AND ALCOHOL CHANGES (See Exhibit 3b)	-1.6%
3. SAFETY CHANGES	0.0%
4. PERMANENT PARTIAL DISABILITY PRE-EXISTING CONDITION	0.0%
5. GOING TO AND COMING FROM WORK	0.0%
6. RECREATIONAL ACTIVITIES	0.0%
7. ADMINISTRATIVE LAW JUDGES AND LEGAL ADVISORS	0.0%
8. INTERPRETATION OF THE LAW	-1.0%
STRICT CONSTRUCTION	
ABROGATION OF CASE LAW	
BURDEN OF PROOF	
9. WRITTEN NOTICE OF THE ACCIDENT	0.0%
10. COMPROMISE SETTLEMENTS	0.0%
11. OTHER BENEFITS CHANGES	<u>0.0%</u>
12. TOTAL	-3.6%

Missouri Workers Compensation Insurance Advisory Loss Costs

Effective January 1, 2006 Analysis of SB 1 Drug and Alcohol Provisions

1.	Large Local WC Insurer Claims Excess of \$250,000 (10 years)	
a.	Old Law Reduction in Loss for Drugs and Alcohol	-2.2%
b.	SB 1 Reduction in Loss for Drugs and Alcohol	-7.3%
c.	Change Due to SB 1	-5.1%
2.	Percent of Loss Excess of \$250k (Estimated Statewide)	15.0%
3.	Estimated Drug & Alcohol Impact on Claims Below \$250k (See Exhibit 3c)	-1.0%
4.	Total Estimated Drug & Alcohol Impact $(1c) \times (2) + (3) \times [1 - (2)]$	-1.6%

Notes

The drug & alcohol provisions of SB 1 apply to both indemnity and medical but are assumed to apply to indemnity benefits only for the purposes of this analysis.

There could be additional savings due to reduction in medical losses and total denial of claims where alcohol or drugs were the proximate cause of the accident.

Missouri Workers Compensation Insurance Advisory Loss Costs

Effective January 1, 2006

Analysis of SB 1 Drug and Alcohol Provisions - Claims Below \$250,000

	<u>Expected</u>
1. Percent of claims with drug or alcohol involvement	
a. Various studies - heavy drinkers are 1.35 to 2.0 times more likely to be injured - about 2% of workers drink on the job Combined result	2.7% to 3.9%
b. Railroad workers injuries involving alcohol	4.0%
c. Emergency room - injured workers with .05% alcohol	5.0%
d. Large Local WC Insurer Claims Excess of \$250,000 (10 years)	8.4%
e. Selected Percent of Claims With Drugs or Alcohol (Claims Below \$250k)	4.0%
2. Drug and Alcohol Relative Severity (judgment)	1.50
3. Indemnity Percent of Loss (Exhibit 2)	47%
4. Drug & Alcohol Increased Penalty	-35%
5. Percent Reduction In Losses (1e)*(2)*(3)*(4)	-1.0%

Notes

- Spincer, Miller & Smith. 2003. Worker Substance Use, Workplace Problems and the Risk of Occupational Injury: A Matched Case Control Study. Journal of Studies on Alcohol.
Veazie & Smith. 2000. Heavy Drinking, alcohol Dependence, and Injuries at Work Among Young Workers in the United States Labor Force. Alcoholism: Clinical and Experimental Research.
Smith Craig & Kraus. 1988. Alcohol and Residential, Recreational and Occupational Injuries: A Review of the Epidemiological Evidence. Annual Review of Public Health.

There are not many studies relating directly to workplace injuries involving drugs or alcohol. The referenced studies are old and may not accurately reflect current Missouri circumstances.

- The drug & alcohol provisions of SB 1 apply to both indemnity and medical but are assumed to apply to indemnity benefits only for the purposes of this analysis.
There could be additional savings due to reduction in medical losses and total denial of claims where alcohol or drugs were the proximate cause of the accident.

Missouri Senate Bills 1 and 130
Effective August 28, 2005
(Adapted From Division of Workers' Compensation Information)

1. DEFINITION OF ACCIDENT

- Unexpected traumatic event or unusual strain identifiable by time and place of occurrence.
- Producing objective symptoms of injury caused by a specific event during a single work shift.
- Injury is not compensable if work was a triggering or precipitating factor.
- Injury should arise out of and in the course of employment.

Section 287.020.2

2. DEFINITION OF INJURY

- Formerly for an injury to be compensable, employment had to be a substantial factor in causing the resulting medical condition or disability.
- Now, to be compensable the accident must be “the prevailing factor in causing both the resulting medical condition and disability.” Section 287.020.3
- The prevailing factor is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability. Section 287.020.3(1)

3. IDIOPATHIC INJURIES

- Idiopathic Injuries are not compensable. An idiopathic injury is one that is innate or is a peculiar weakness personal to the employee, unrelated to employment.
- The event results from some cause personal to the individual.
Section 287.020.3 (3)
- A cardiovascular (a disease of the heart or blood vessels), pulmonary (relating to, or affecting the lungs), respiratory (relating to, used in, or affecting respiration), or other disease, or cerebrovascular accident (stroke) or myocardial infarction (heart attack) suffered by an employee is not compensable unless The employee proves that the accident was the prevailing factor in causing the resulting medical condition. Section 287.020.3(4)

4. DRUG AND ALCOHOL CHANGES

- The effect of the new statutory changes will be to reduce benefits in those circumstances where drugs or alcohol were the proximate cause of the injury. It allows employers to control the use of drugs and alcohol in the workplace that might lead to injuries. Section 287.120.6(1)
- When an injury is sustained in conjunction with the use of alcohol or non-prescribed controlled drugs the compensation “shall” be reduced by 50% instead of the former 15% reduction. Section 287.120.6 (1)

- Deletes the former requirement that an employee had to have “actual knowledge” of the employer’s no alcohol/drug-free workplace policy in order for the former 15% benefit reduction to apply.
- Now, not only does the law not require actual knowledge of such policies, but the former requirement that employers had to make a “diligent effort to inform the employee of the requirement to obey any reasonable rule or policy” was deleted and not replaced with any new standard. Section 287.120.6(1)
- The law remains that if “the use of alcohol or non-prescribed controlled drugs in violation of the employer’s rule or policy is the proximate cause of the injury” benefits shall be forfeited.
- The new law does not require an employer to post and publicize its rules or policy.
- In addition, the new law deletes the former provision that forfeiture did not apply if the employer had actual knowledge of the employee’s alcohol/drug use which was not authorized by the employer. (Deleted Section 287.120.6(2)(a) and (b).)
- New 287.120.6(3) provides that if the employee’s blood alcohol content is sufficient to constitute legal intoxication a rebuttable presumption is created that the employee’s voluntary use of alcohol was the proximate cause of the injury. An employee can rebut the presumption by a preponderance of the evidence.
- Also, adds that an employee’s refusal to take a drug or alcohol test at the employer’s request results in benefit forfeiture if: (1) “the employer had sufficient cause to suspect” drug or alcohol use OR (2) the employer’s policy clearly authorizes such post-injury testing. Section 287.120.6(3)

5. SAFETY CHANGES

- If the employee fails to use safety devices provided by the employer or fails to obey safety rules, compensation is reduced between twenty-five (25) and fifty (50) percent. Current law requires reduction of 15%.
- The employee’s failure to use safety devices no longer has to be willful. In addition an employer is required to make a “reasonable” effort to cause employees to follow the safety rules. Section 287.120.5

6. PERMANENT PARTIAL DISABILITY PRE-EXISTING CONDITION

Any award of compensation shall be reduced by an amount proportional to permanent partial disability that is determined to be: A pre-existing disease or condition, or Attributed to natural aging process that is sufficient to cause or prolong the disability or need for treatment. Section 287.190.6 (3)

7. GOING TO AND COMING FROM WORK

- General Rule: Injuries that an employee sustains going to and coming from the place of employment are not compensable.
- Injuries, in company owned or subsidized automobiles, that occur while traveling from the employee’s home to the employer’s principal place of business or vice versa are not compensable. Section 287.020.5

- **Parking lot cases.** The “extension of premises” doctrine is abrogated (abolished) to the extent it extends liability for accidents that occur on property not owned or controlled by the employer. Even if the accident occurs on customary, approved, permitted, usual or accepted routes used by the employee to get to and from his place of employment. Section 287.020.5

8. RECREATIONAL ACTIVITIES

- The former law specifically excluded from coverage only injuries resulting from voluntary participation in a recreational activity or program that resulted in the proximate cause of the injury. The new law deletes the words “voluntary” and “proximate” and excludes injuries where the recreational activity or program is the prevailing cause of the injury regardless of the fact that the employer may have promoted, sponsored or supported the recreational activity or program.
Section 287.120.7
- The forfeiture of benefits or compensation shall not apply when:
 - a) The employee was directly ordered by the employer to participate in such recreational activity or program;
 - b) The employee was paid wages or travel expenses while participating in such recreational activity or program; or
 - c) The injury from such recreational activity or program occurs on the employer’s premises due to an unsafe condition and the employer had actual knowledge of the employee’s participation in the recreational activity or program and of the unsafe condition of the premises and failed to either curtail the recreational activity or program or cure the unsafe condition.

9. ADMINISTRATIVE LAW JUDGES AND LEGAL ADVISORS

- The Division currently has twenty-six (26) Administrative Law Judges and fourteen (14) additional ALJ’s may be appointed to bring the total number to 40. Twenty-two (22) Legal Advisors will be eliminated. Section 287.610.1
- The Division Director along with the members of the “Administrative Law Judge Review Committee” will develop written performance audit standards by October 1, 2005.
- The Division Director along with the ALJ Review Committee will conduct a performance audit of all Administrative Law Judges every two (2) years.
- Upon completing the performance audit for each Administrative Law Judge, the Committee will make a recommendation of confidence or no confidence.
Section 287.610.2

10. STRICT CONSTRUCTION

- The Commission, Division and the reviewing courts will strictly interpret the words to further the purpose and object of the statutory changes to the workers’ compensation law as written by the legislature. Section 287.800.1
- The Administrative Law Judges and the Labor & Industrial Relations Commission shall weigh the evidence impartially without giving the benefit of doubt to any party when resolving the factual conflicts. Section 287.800.2

11. ABROGATION OF CASE LAW

In applying the provisions of this chapter, it is the intent of the legislature to reject and abrogate (abolish) certain earlier case law interpretations. This was done by the legislature to emphasize the importance of new definitions and the strict interpretation of the law by the Labor and Industrial Relations Commission, Division of Workers' Compensation and the Administrative Law Judges.

Section 287.020.10

12. BURDEN OF PROOF

- New §287.808 has been added.
- The burden of establishing an affirmative defense is on the employer.
- The employee or dependent has the burden of proving that he is entitled to compensation under the workers' compensation law.
- In asserting any claim or defense based on a factual proposition, the party asserting such claim or defense must establish that such proposition is more likely to be true than not true.

13. COMPROMISE SETTLEMENTS

- Parties may enter into voluntary agreements to settle or compromise any dispute or claim for compensation. For the agreement to be valid it must be approved by the Administrative Law Judge or Commission. Settlement must be in accordance with the rights of the parties. Section 287.390.1
- The Administrative Law Judge or Commission shall approve a settlement agreement as valid and enforceable. As long as the settlement is not the result of undue influence or fraud, the employee fully understands his or her rights to benefits, and voluntarily agrees to accept the terms of the agreement. Section 287.390.1
- Offer Made by Employer/Employee not represented by an attorney - When an offer of settlement is made in writing and filed with the Division by the employer, an employee is entitled to 100% of the amount offered, provided that such employee is not represented by counsel at the time the offer is tendered. Section 287.390.5
- Where the employee does not accept the offer of settlement and additional proceedings take place with respect to the claim, the employee is entitled to 100% of the amount initially offered. Legal counsel representing the employee shall receive reasonable fees for services rendered. Section 287.390.5
- An offer of settlement shall not be construed as an admission of liability. Section 287.390.6

14. WRITTEN NOTICE OF THE ACCIDENT

- To maintain a proceeding for compensation under Chapter 287 written notice of the time, place and nature of the injury and the name and address of the injured person has to be given to the employer no later than thirty days after the accident unless the employer was not prejudiced by failure to receive the notice. Section 287.420

- The previous requirement of providing written notice of the time, place and nature of the injury and name and address of the person injured “as soon as practicable after the happening thereof” has been deleted.
- Also deleted is the finding of the Division or Commission on good cause for failure to give notice.
- In addition, the old language of “no defect or inaccuracy in the notice shall invalidate it unless the commission finds that the employer was in fact misled and prejudiced thereby” has been deleted. Section 287.420
- There is a similar 30 day notice requirement after the diagnosis of industrial disease and repetitive trauma injuries. Section 287.420

15. OTHER BENEFITS CHANGES

- **MILEAGE** – Employee will receive mileage reimbursement for medical examination or treatment outside of local or metropolitan area from the employee’s principal place of employment (not place of injury or place of residence under old law). Section 287.140.1
- **DELETES** – The temporary partial disability benefits paid to employee for undergoing physical rehabilitation for “serious injury,” or for evaluating permanent disability. Note: §287.141 still governs the physical rehabilitation benefits from the Second Injury Fund. Section 287.140.1
- **VOCATIONAL EVALUATION**- Requires employees to submit to appropriate vocational testing and vocational rehabilitation assessment scheduled by an employer or its insurer. Section 287.143
- **EMPLOYER’S SUBROGATION LIEN**- Adds language giving employers a subrogation lien on any third-party recovery. Section 287.150
- **OCCUPATIONAL HEARING LOSS**- Establishes the decibel standards on the most current ANSI occupational hearing loss standard. The Division shall promulgate a rule on the hearing loss standards. Section 287.197
- **SURVEILANCE NOT A “STATEMENT”**- Statement does not include a videotape, motion picture, or visual reproduction of an image of an employee. Also, ‘statement’ now may be provided within 30 days – instead of 15 days- of a proper written request by employee, dependent or their attorney. §287.215
- **TEMPORARY AWARD PENALTY** – Failure to comply with temporary award may result in the doubling of the amount “equal to the value of compensation ordered and unpaid” in the final award. Section 287.510
- **REVIEW OF CLAIMS** – Beginning January 1, 2006, only Administrative Law Judges, the Commission, and the Appellate Courts have the power to review claims. Section 287.801

**Missouri Workers Compensation Insurance Advisory Loss Costs
Effective January 1, 2006**

Adjustment of Statewide Loss Costs To Voluntary Loss Costs

(1) Assigned Risk Manual Loss Cost Multiplier at 1/1/05 NCCI ALC	1.862
(2) Assigned Risk Expected Loss Ratio Underlying 7/1/05 Rates	0.686
(3) Expected A/R Loss Ratio at 1/1/05 NCCI ALC	1.278
(4) Projected Statewide Loss Ratio at 1/1/05 NCCI ALC	0.813
(5) Expected A/R Market Share	4.9%
(6) Projected Voluntary Loss Ratio at 1/1/05 NCCI ALC	0.789
(7) Ratio of Voluntary to Statewide Loss Ratio	0.971 -2.9%

A/R higher
57%



Notes

- (1) From Travelers' 2005 Assigned Risk rate filing
- (2) From Travelers' 2005 Assigned Risk rate filing = .755/1.10
- (3) = (1) * (2)
- (4) From Exhibit 1 = MDI Projected/LAE
- (5) See Exhibit 4b
- (6) = [(4) - (5)*(3)] / [1 - (5)]
- (7) = (6) / (4)

**Missouri Workers Compensation Insurance Advisory Loss Costs
Effective January 1, 2006**

**Estimated Assigned Risk Loss Costs Market Share
NCCI Advisory Loss Costs**

Calendar <u>Year</u>	Statewide Standard Pure Premium <u>at NCCI ALC</u> (1)	Assigned Risk Standard Pure Premium <u>at NCCI ALC</u> (2)	Assigned Risk Pure Premium Market Share <u>(2)/(1)</u> (3)
2001	510,887,928	9,518,193	1.9%
2002	528,000,548	21,141,506	4.0%
2003	564,427,861	31,748,320	5.6%
2004	622,408,950	40,773,363	6.6%

(4) Premium Trend Factor 1.055

(5) 2006 Projected 656,472,769 32,223,416

4.9%

Notes to Exhibit 4b

(1) 2001 to 2003 are from last year NCCI (VA Surety, Lumbermen, AIG included).
 The Column (1) amount for 2004 is estimated because 3 insurers did not report.
 2004 is estimated to be NCCI this year plus estimated VA Surety, Lumbermen & AIG.

	Direct Earned Premium <u>Pg 15 2003</u>	Direct Earned Premium <u>Pg 15 2004</u>	NCCI ALC <u>2003</u>	NCCI ALC <u>2004 Est</u>
Lumbermans	2,028,198	(81,429)	4,353,952	-
Virginia Surety	6,857,196	3,982,010	8,098,413	4,702,791
AIG	81,883,518	119,070,857	45,709,062	66,467,799
				71,170,590
			Average ALC Change	1.057
				75,234,038

(2) From NCCI

(3) = (2) / (1)

(4) The statewide wage trend is assumed to be 2.7% per year (from NCCI).

(5) The Travelers' Assigned Risk rate filing estimates premium to be \$60 million for 7/1/2005-06. The loss cost multiplier is estimated to be 1.862.

$32,223,416 = 60,000,000 / 1.862$

**Missouri Workers' Compensation Insurance
Calendar Year Data From Page 14/15**

Source is NAIC State Data Network

Calendar Year	Direct Premium Written	Direct Premium Market Share	Direct Premium Earned	Policyholder Dividends	Dividends % Prior Year DWP (4)/[(1) prior yr]	Direct Premium Unearned	Direct Losses Paid	Direct Losses Incurred	Incurred Loss Market Share	Incurred Loss Ratio (8)/(3)	Change In Reserves	Incurred Allocated LAE % Loss	Commission & Brokerage % DWP	Taxes, Licenses & Fees %DWP
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)
Voluntary Private Carriers (Excluding MEM)														
1994														
1995														
1996	443,723,881	76%	450,973,594	6,188,341		75,400,504	306,836,169	172,007,393	64%	38%	-10%	17%		
1997	435,959,260	79%	420,726,797	7,555,926	1.7%	90,982,971	280,781,688	243,493,875	77%	58%	-3%	12%		
1998	459,662,626	83%	469,925,799	8,239,523	1.9%	80,827,061	318,004,955	272,465,384	81%	58%	-4%	10%		
1999	473,644,502	83%	466,559,132	8,596,537	1.9%	87,888,601	321,820,178	338,308,189	85%	73%	1%	12%		
2000	499,887,241	81%	472,964,725	7,604,234	1.6%	107,894,597	369,284,009	406,937,644	83%	86%	3%	8%		
2001	528,137,387	76%	488,221,843	8,193,684	1.6%	146,944,773	380,000,001	410,126,332	78%	84%	3%	7%		
2002	587,067,808	72%	572,362,526	6,628,113	1.3%	157,990,996	359,704,947	424,059,261	75%	74%	6%	8%	7.1%	2.7%
2003	659,520,403	73%	628,468,428	4,247,522	0.7%	197,624,738	350,002,057	438,779,077	74%	70%	7%	9%	6.4%	2.7%
2004	742,366,559	77%	720,342,693	1,752,766	0.3%	220,646,725	369,343,735	469,556,919	80%	65%	8%	12%	6.7%	2.9%
All Year Total	4,829,969,667	77%	4,690,545,537	59,006,646	1.9%	1,166,200,966	3,055,777,739	3,175,734,074	78%	68%		10%		
5 Year Total	3,016,979,398	75%	2,882,360,215	28,426,319	1.9%	831,101,829	1,828,334,749	2,149,459,233	78%	75%		9%		
3 Year Total	1,988,954,770	74%	1,921,173,647	12,628,401	1.6%	576,262,459	1,079,050,739	1,332,395,257	76%	69%		10%	6.7%	2.8%

**Missouri Workers' Compensation Insurance
Calendar Year Data From Page 14/15**

Source is NAIC State Data Network

	Direct	Direct	Dividends						Incurred			Incurred		Taxes,
Calendar	Direct	Premium	Premium	Policyholder	% Prior Year	Direct	Direct	Direct	Loss	Incurred	Change In	Allocated	Commission	Licenses
Year	Premium	Market	Direct	Dividends	DWP	Premium	Losses	Losses	Market	Loss Ratio	Reserves	LAE	& Brokerage	& Fees
	Written	Share	Earned		(4)/[(1) prior yr]	Unearned	Paid	Incurred	Share	(8)/(3)		% Loss	% DWP	%DWP
-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)
Missouri Employers Mutual														
1994														
1995	33,639,553	6%	33,639,553	-		-	4,755,936	23,834,748	6%	71%			6.0%	0.0%
1996	98,600,508	17%	98,600,508	-	0.0%	-	26,581,045	66,875,314	25%	68%	211%	2%	6.0%	0.1%
1997	84,814,857	15%	83,500,000	-	0.0%	1,314,857	35,084,794	49,962,919	16%	60%	24%	14%	6.0%	1.3%
1998	80,053,275	14%	80,400,000	-	0.0%	968,132	38,454,856	50,406,298	15%	63%	16%	8%	6.5%	1.4%
1999	82,466,603	15%	77,000,000	-	0.0%	6,434,734	38,160,407	51,856,316	13%	67%	17%	8%	6.6%	1.8%
2000	103,480,318	17%	99,400,000	-	0.0%	10,515,052	50,577,030	75,021,885	15%	75%	25%	3%	7.3%	0.8%
2001	136,721,650	20%	134,800,000	-	0.0%	12,436,701	69,648,814	97,146,814	19%	72%	23%	5%	7.7%	0.9%
2002	172,491,054	21%	166,800,000	-	0.0%	18,127,755	78,845,041	101,141,665	18%	61%	15%	5%	7.5%	0.6%
2003	170,436,908	19%	165,747,000	-	0.0%	22,817,663	83,207,450	107,593,121	18%	65%	13%	3%	8.1%	3.0%
2004	155,092,846	16%	159,581,692	-	0.0%	18,328,817	82,275,336	76,354,143	13%	48%	-3%	6%	11.6%	2.8%
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All Year Total	1,117,797,572	16%	1,099,468,753	-	0.0%	90,943,711	507,590,709	700,193,223	16%	64%		5%	7.7%	1.5%
5 Year Total	738,222,776	18%	726,328,692	-	0.0%	82,225,988	364,553,671	457,257,628	17%	63%		4%	8.5%	1.7%
3 Year Total	498,020,808	19%	492,128,692	-	0.0%	59,274,235	244,327,827	285,088,929	16%	58%		5%	9.0%	2.1%

**Missouri Workers' Compensation Insurance
Calendar Year Data From Page 14/15**

Source is NAIC State Data Network

Calendar Year	Direct Premium Written	Direct Premium Market Share	Direct Premium Earned	Policyholder Dividends	Dividends % Prior Year DWP (4)/(1 prior yr)	Direct Premium Unearned	Direct Losses Paid	Direct Losses Incurred	Incurred Loss Market Share	Incurred Loss Ratio (8)/(3)	Change In Reserves	Incurred Allocated LAE % Loss	Commission & Brokerage % DWP	Taxes, Licenses & Fees %DWP
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)
Assigned Risk Pool														
1994														
1995														
1996	39,580,364	7%	40,569,673	-		15,741,748	10,030,430	30,920,902	11%	76%	467%	9%	7.3%	1.0%
1997	27,715,197	5%	33,622,137	-	0.0%	9,834,809	16,335,341	21,340,142	7%	63%	20%	3%	7.0%	1.0%
1998	16,083,516	3%	19,999,228	-	0.0%	5,919,097	12,286,159	11,545,924	3%	58%	-2%	9%	5.5%	2.0%
1999	11,813,721	2%	12,665,908	-	0.0%	5,066,909	9,859,505	8,470,871	2%	67%	-5%	6%	5.5%	2.0%
2000	11,385,050	2%	10,907,616	-	0.0%	5,544,343	8,167,989	9,372,076	2%	86%	4%	16%	4.5%	3.5%
2001	30,609,916	4%	20,399,131	-	0.0%	15,755,128	10,582,519	15,673,013	3%	77%	17%	9%	3.8%	2.5%
2002	58,530,350	7%	48,154,900	-	0.0%	26,130,578	13,884,409	40,228,731	7%	84%	76%	10%	4.4%	2.0%
2003	74,332,073	8%	66,953,433	-	0.0%	33,509,219	21,140,943	45,831,911	8%	68%	41%	12%	5.0%	3.3%
2004	66,100,599	7%	71,371,470	-	0.0%	28,238,348	26,869,154	43,564,525	7%	61%	20%	8%	4.7%	3.2%
All Year Total	336,150,786	5%	324,643,496	-	0.0%	145,740,179	129,156,449	226,948,095	6%	70%		9%	5.2%	2.4%
5 Year Total	240,957,988	6%	217,786,550	-	0.0%	109,177,616	80,645,014	154,670,256	6%	71%		11%	4.6%	2.8%
3 Year Total	198,963,022	7%	186,479,803	-	0.0%	87,878,145	61,894,506	129,625,167	7%	70%		10%	4.7%	2.9%

**Missouri Workers' Compensation Insurance
Calendar Year Data From Page 14/15**

Source is NAIC State Data Network

Calendar Year	Direct Premium Written	Direct Premium Market Share	Direct Premium Earned	Policyholder Dividends	Dividends % Prior Year DWP (4)/[(1) prior yr]	Direct Premium Unearned	Direct Losses Paid	Direct Losses Incurred	Incurred Loss Market Share	Incurred Loss Ratio (8)/(3)	Change In Reserves	Incurred Allocated LAE % Loss	Commission & Brokerage % DWP	Taxes, Licenses & Fees %DWP
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)
Missouri Statewide														
1994	658,283,485	100%	640,699,576	14,489,240		138,810,297	393,276,018	392,211,021	100%	61%				
1995	603,331,681	100%	645,790,459	15,441,289	2.3%	97,028,754	369,117,519	373,176,409	100%	58%	0%	8%		
1996	581,904,753	100%	590,143,775	6,188,341	1.0%	91,142,252	343,447,644	269,803,609	100%	46%	-5%	12%		
1997	548,489,314	100%	537,848,934	7,555,926	1.3%	102,132,637	332,201,823	314,796,936	100%	59%	-1%	12%		
1998	555,799,417	100%	570,325,027	8,239,523	1.5%	87,714,290	368,745,970	334,417,606	100%	59%	-3%	9%		
1999	567,924,826	100%	556,225,040	8,596,537	1.5%	99,390,244	369,840,090	398,635,376	100%	72%	2%	11%		
2000	614,752,609	100%	583,272,341	7,604,234	1.3%	123,953,992	428,029,028	491,331,605	100%	84%	5%	7%		
2001	695,468,953	100%	643,420,974	8,193,684	1.3%	175,136,602	460,231,334	522,946,159	100%	81%	5%	7%		
2002	818,089,212	100%	787,317,426	6,628,113	1.0%	202,249,329	452,434,397	565,429,657	100%	72%	8%	7%	7.0%	2.2%
2003	904,289,384	100%	861,168,861	4,247,522	0.5%	253,951,620	454,350,450	592,204,109	100%	69%	10%	8%	6.6%	2.8%
2004	963,560,004	100%	951,295,855	1,752,766	0.2%	267,213,890	478,488,225	589,475,587	100%	62%	7%	11%	7.4%	2.9%
All Year Total	6,853,610,153	100%	6,726,808,692	74,447,935	1.7%	1,499,913,610	4,056,886,480	4,452,217,053	100%	66%		8%		
5 Year Total	3,996,160,162	100%	3,826,475,457	28,426,319	1.3%	1,022,505,433	2,273,533,434	2,761,387,117	100%	72%		8%		
3 Year Total	2,685,938,600	100%	2,599,782,142	12,628,401	1.3%	723,414,839	1,385,273,072	1,747,109,353	100%	67%		9%	7.0%	2.7%